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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
AT ALBUQUERQUE NM

MAR 10 2000

PAUL L. DAVIS,

Applicant,

ROBERT M. MARCH
CLERK

v.

No. CIV-00-0198 LH/DJS

JOE WILLIAMS, et al.,

Respondents.

MEMORANDUM OPINION AND ORDER FOR TRANSFER

This matter is before the Court on Applicant's motion for leave to proceed under 28 U.S.C. § 1915 (Doc. #2), and *sua sponte* for preliminary consideration of Applicant's application for writ of habeas corpus under 28 U.S.C. § 2241. Applicant attacks allegedly unconstitutional conditions of confinement, and he seeks an order vacating his conviction and releasing him from confinement. Applicant has previously filed at least two applications under 28 U.S.C. § 2254, *see, e.g., Davis v. Williams*, No. CIV-99-0509 BB/DJS, which were transferred to the Court of Appeals for the Tenth Circuit.


Under § 2244(b)(3)(A), before an applicant may file or prosecute a second or successive application for writ of habeas corpus, an order authorizing the filing must be issued by the appropriate court of appeals. *See also Haro-Arteaga v. United States*, 199 F.3d 1195, 1197 (10th Cir. 1999). Even though the instant pro se application is brought under § 2241, the application is subject to this "gatekeeping" provision of section 2244(b)(3)(A). *Gutierrez v. Perrill*, No. 96-1038, 1996 WL 733768, at **1 (10th Cir. 1996); *Vargas v. Sikes*, 42 F. Supp.2d 1380, 1381 (N.D. Ga. 1999) (citing *Felker v. Turpin*, 518 U.S. 651, 662 (1996)); and *see Reid v. Oklahoma*, 101 F.3d 628, 630 (10th Cir. 1996) (applying abuse-of-the-writ principles to petitions attacking execution of

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sentence). A second or successive application that is not accompanied by an authorizing order must be transferred to the Court of Appeals for the Tenth Circuit pursuant to 28 U.S.C. § 1631. *Coleman v. United States*, 106 F.3d 339, 341 (10th Cir. 1997). This application is not accompanied by an authorizing order, and the proceeding will be transferred to the Court of Appeals for the Tenth Circuit.

IT IS THEREFORE ORDERED that Applicant's motion for leave to proceed under 28 U.S.C. § 1915 (Doc. #2) is GRANTED, and Applicant may proceed without prepayment of costs or other fees or the necessity of giving security therefor;

IT IS FURTHER ORDERED that the Clerk is directed to transfer this case to the Court of Appeals for the Tenth Circuit pursuant to 28 U.S.C. § 1631.


UNITED STATES DISTRICT JUDGE